
(2006) 07 PAT CK 0069
In the Patna High Court
Case No : CWJC No. 13989 of 2001

Jang Bahadur Rai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-07-2006

Acts Referred:

Bihar Privileged Persons Homestead Tenancy Act, 1947 — Section 2(i), 21

Citation : (2006) 3 PLJR 354

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ramesh Kumar Datta, J.—Heard Mr. Madan Mohan Prasad, learned counsel for the petitioner, learned J.C. to S.C. No. 5 for the State and Mr. Anurag Pandey, learned counsel for the respondent No. 5. Learned counsel appearing for respondent No. 4 is not appearing today. Although several opportunity had been granted to respondent No. 4 starting from 5.5.2004 itself to file counter affidavit yet no counter affidavit controverting the stand of the petitioner is on the record by respondent No. 4. The relief sought for by the petitioner is to quash the order dated 17.9.93 (Annexure-1) passed by the Circle Officer, Raghapur in Case No. 37/93-94 under the Bihar Privileged Persons Homestead Tenancy Act, the order dated 10.1.97 (Annexure-2) passed in Mutation Case No. 373/96-97 and further to quash the order dated 2.7.2001 (Annexure-3) passed in Misc. Appeal No. 127/97-98.

2. By his order the Circle Officer, Raghapur had declared respondent No. 4, Lagandeo Rai as a privileged tenant under the B.P.P.H.T. Act and thereafter parcha had been issued in his name appertaining to 7 decimals land in S.P. No. 592 under Khata No. 139 area 0.07 acres in village Chandpura, P.S. and Anchal-Raghapur, District-Vaishali. The petitioner claims that no notice was served upon him although he had purchased the said land from respondent No. 5 by registered sale deed on 2.7.1988 itself and thereafter was coming in peaceful

possession over the same to the knowledge of all concerned. After obtaining the original copy of the registered sale deed from the Registration Office, the petitioner filed Mutation Case No. 373/96-97 and then he came to learn that the parcha had been surreptitiously issued in the name of respondent No. 4, Lagandeo Rai. The petitioner thereafter filed revision before the Collector of the District u/s 21 of the Act which was also dismissed.

3. Learned counsel for the petitioner submits on the basis of Annexure-1 which contains the report of the Karamchari and the order of Circle Officer granting parcha in favour of respondent No. 4 that the same itself shows that the order was passed without jurisdiction since the requirement under the Act is for inspection by the officer not below the rank of Circle Officer whereas the inspection has been made by the Karamchari. Learned counsel further points out that even the report of the Karamchari speaks of notice to be issued to the land owner and after service report of the same parcha to be issued in favour of respondent No. 4 but without doing the same straightway parcha had been issued by order passed by the Circle Officer in Case No. 37/93-94 on 17.9.93. The other contention of learned counsel is that sufficient lands stand in the name of Shyam Nandan Rai, father of respondent No. 4 in village-Chandpura, P.S. Raghopur and details of the land has been mentioned in para-3 (vi)(a) and further thereafter 2 trucks in his name bearing No. BWR-3654 and BWO-7162. He has got separate residential house. On that account he also submitted that respondent No. 4 is not a privileged person as defined in Section 2(i) of the Act. For the said reasons it is submitted by learned counsel that the orders of the Circle Officer and the District Collector have been passed without jurisdiction, without hearing him or even his vendor who was the recorded owner of the land since no notice had been issued even on him.

4. A counter affidavit has been filed on behalf of respondent No. 5, Prameshwar Jha, who was previous owner of the land which was purchased by the petitioner in 1988, and he has also clearly stated that no notice was served upon him regarding the proceeding under the B.P.P.H.T. Act. Although he was in possession prior to 2.7.88 and thereafter the petitioner has been in possession over the said part of the land.

5. On a consideration of the aforesaid facts and circumstances and the fact that the contentions raised in the writ petition having not been controverted by filing a counter affidavit either on behalf of the State or by the respondent No. 4 himself, who had appeared on 2.1.2002, i.e., 4 and half years back. It is clear that there has been a violation of Rule 5(2) of the Rules under which it is mandatory to issue notice upon all the interested persons, which definitely includes the owner of the land as provided therein. There has also been violation of Rule 5(1) which requires that local enquiry has to be made by responsible officer not below the rank of Circle Inspector or Welfare Officer, since the same has been made by the Karamchari. In view of the aforesaid facts and provisions of law this writ petition is allowed and the order dated 17.9.1993 passed by the

Circle Officer, the order dated 2.7.2001 passed by the Collector and the order of the Circle Officer dated 10.1.1997 passed in Mutation Case No. 373/96-97 are quashed. However, in the facts and circumstances of the case there shall be no order as to cost.